

REMARKS

Claims 17 – 22 and 26-44 were submitted for examination. Claims 17-22 and 26-44 stand rejected under 35 U.S.C. 102 (a) and (e) as being anticipated by Haartssen et al. (WO 01 99384). In view of the following remarks, Applicant submits that all claims remaining in the case are in condition for allowance and that all other objections have been overcome.

The Advisory Action objects that claim 44 should end with a period. Such claim has been amended accordingly, and such objection has thus been overcome.

Regarding the claim rejections, Claims 17-22 and 26-44 -25 stand rejected under 35 U.S.C. 102(a) and (e) as being anticipated by Haartssen. Haartssen discloses an algorithm for selecting a packet type based on the condition of a wireless channel. In particular, Haartssen discloses an algorithm for selecting a Bluetooth packet type, from among packet types that vary in length and encoding, based on the condition of a Bluetooth channel.

The Advisory Action fails to present a prima facie case of anticipation for Applicants' claims. This is true for several reasons. First of all, the Office Action lumps together the rejections of Claims 17-22 and 26-44, without distinguishing among the specific claims. Thus, it was difficult for Applicant to discern which particular arguments of the Office Action were directed to specific claims. Accordingly, the Office Action fails to meet its goal. See MPEP 706 ("the goal of examination is to clearly articulate any rejection ...") The ground of a rejection should be "fully and clearly

stated.” MPEP 707.07(d). Furthermore, “[a] plurality of claims should never be grouped together in a common rejection, unless that rejection is equally applicable to all claims in the group.” MPEP 707.07(d). Therefore, the rejections of all claims remaining in the application have been improperly expressed. There has thus been a failure to make a prima facie showing of anticipation for any claim remaining in the case. Thus, the Office Action leaves all claims remaining in the case allowable. Claims 17-22 and 26-44 should issue as they stand, for at least this reason.

Secondly, even if (for the sake of argument) the rejections had been properly expressed, they would have failed to make a prima facie case of anticipation. The Haartssen reference simply does not anticipate Applicant’s claims. “[F]or anticipation under 35 U.S.C. 102, the reference must teach *every aspect* of the claimed invention ...” MPEP 706.02 (emphasis added). “The identical invention must be shown in as complete detail as contained in the ... claim.” *Richardson v., Suzuki Motor Co.*, 868 F. 2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). Haartssen simply fails to disclose every aspect of the claimed invention.

The Advisory Action states that “[t]he prior art of record does not restrict varying transmission metrics based on channel noise exclusively to metrics such as packet lengths as alleged.” Such statement indicates that the Advisory Action has attempted to improperly modify the Examiner’s burden regarding a prima facie case of anticipation. The Advisory Action must show each and every claimed element in order to make out a prima facie case of anticipation. The assertion that the Haartssen “does not restrict” its teachings to exclude Applicants’ claimed elements shows an improper focus – Haartssen must affirmatively show the claimed elements; a statement that Haartssen does not

disavow an element falls far short of affirmatively showing the element. In Haartssen, the only action disclosed for response to a determination of channel conditions is the selection of a packet type (See, Description, p. 1, para. 2).

The Office Actions asserts that “Haartssen discloses means to optimize data communications efficiency by making a nexus between throughput efficiencies with channel conditions, e.g., at page 18 paras. 1-2.” Office Action, p1, para. 1.1. Applicant does not here assert whether or not such statement is true. Applicant simply points out that, even if the statement were true, it is immaterial. Applicant does not claim a means for optimizing data communications efficiency by “making a nexus between throughput efficiencies and channel conditions.” The Office improperly relies on a vague nexus theory instead of focusing on the claim language at issue. The Office Action thus does not present a prima facie case of anticipation regarding Applicant’s claims.

Applicant claims specific features that are not in any way disclosed by the “nexus” to which the Office Action refers. Claim 17 recites, in part: “step up data transfer rate at which future data packets are to be transmitted if said PER value is greater than a drop rate threshold and if an intermittent interference is detected.” (emphasis added) Also, Claim 29 recites, in part: “increasing the transmission rate for the wireless channel while maintaining the packet length.” (emphasis added) And, Claim 43 recites, in part: “increasing the transmission rate for the wireless channel while maintaining the packet length.” (emphasis added)

Specifically regarding claims 17-22 and 26-44, the Office Action states that “Haartssen discloses a data processing system ... that dynamically selects packet type, such as packet lengths, or error encoding procedures, based on channel conditions or

characteristics, such as packet error rate (PER) in Tables 1-5.” The Office Action also states, “[s]pecific properties of packets are selected by varying encoding schemes, data packet lengths, or modulation.” There is no showing that Haartssen discloses, suggests or teaches control logic to “step up data transfer rate”. Nor is there any showing that Haartssen discloses, suggests or teaches “increasing the transmission rate for the wireless channel while maintaining the packet length.”

Throughout the Haartssen description and claims, it is made clear that the only action taken in response to a determination of channel conditions is the selection of a packet type (See, Description, p. 1, para. 2 “...it is desirable to be able to provide a way to select the packet type, and to do so dynamically based on the condition of the wireless channel.) This focus on selection of packet type is made clear throughout the specification and claims. See, e.g., Summary of the Invention, p. 3: “the present invention is related to a method or an apparatus of dynamically selecting a packet type based on the quality estimates of the channel.” Nowhere in Haartssen is a disclosure, teaching or even hint of a suggestion that the data transmission rate of packets may be modified based on channel conditions.

Of course, one would not expect Haartssen to disclose modification of transmission rate because, in contrast to WLAN technology, Bluetooth transmissions all occur at a single bit rate. At p. 10, l. 25, Haartssen indicates that Table 1 shows *achieved* data rate, not transmission rate. Of course, the implication is that all the packets are transmitted at the same data rate. Rather than disclose increasing or reducing the bit rate, Haartssen discloses that *shorter packets*, not increased data rate, are used “in order to decrease the probability that a packet will be corrupted by interference.” Haartssen, p. 15, l. 3-4.

The Office Action fails to distinguish an action from its result. The cited discussion of Haartssen, at paras. 1 and 2 of p. 18, refers to the state diagram illustrated in Fig. 3 of Haartssen. Such state diagram, and the related discussion, clearly indicate that different packet types (having different lengths encoding options) may be selected based on channel conditions. Table 1 of Haartssen indicates that achieved data rate for each of these different packet types. Haartssen, page 10. Table 2 of Haartssen indicates corresponding throughput. Haartssen, page 10. There is no need to consult a dictionary to determine what Haartssen means by the word “throughput.” Haartssen explicitly defines throughput as “the probability that a packet is correctly received.” Haartssen, p. 10. Note that the data rate indicated at Table 1 is an achieved data rate that may be determined by simulation or direct measurement. See Haartssen, page 10, second and third full paragraphs.

An achieved data rate and a throughput indicate a result. In Haartssen, they reflect the result of sending a packet of a particular length and encoding option over a channel. Even if there is, arguably, a nexus between the resulting data rate or throughput on the one hand, and the selection of a packet size and encoding option on the other hand, this provides absolutely no showing of the claim elements, quoted above, for independent claims 17, 29 and 43. Accordingly, the Office Action has failed to provide a prima facie case of anticipation for any of the claims remaining in the case.

Accordingly, all independent claims are in condition for allowance. For at least the foregoing reasons, all dependent claims are also in condition for allowance.

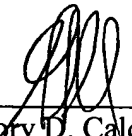
Applicant respectfully submits that the applicable rejections have been overcome and must all be withdrawn. All claims are therefore in condition for allowance.

A check is enclosed along with a petition for a one-month extension of time.

Please charge any shortages and credit any overcharges to our Deposit Account No. 02-2666.

Respectfully submitted,

Dated: November 17, 2004



Gregory D. Caldwell
Registration No. 39,926

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026
(408) 720-8300